

ANIMAL SHELTER REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: _____

LONG TITLE

General Description:

This bill amends cruelty to animal provisions.

Highlighted Provisions:

This bill:

- ▶ makes it a crime to leave an animal tethered and unattended, under certain conditions, in a manner that prevents the animal from reaching shelter; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-9-301, as last amended by Laws of Utah 2015, Chapter 329

76-9-301.5, as last amended by Laws of Utah 2008, Chapter 292

76-9-301.6, as last amended by Laws of Utah 2008, Chapter 292

76-10-1602, as last amended by Laws of Utah 2014, Chapter 167

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-9-301** is amended to read:



28 **76-9-301. Cruelty to animals.**

29 (1) As used in this section:

30 (a) (i) "Abandon" means to intentionally deposit, leave, or drop off any live animal:

31 (A) without providing for the care of that animal, in accordance with accepted animal
32 husbandry practices or customary farming practices; or

33 (B) in a situation where conditions present an immediate, direct, and serious threat to
34 the life, safety, or health of the animal.

35 (ii) "Abandon" does not include returning wildlife to its natural habitat.

36 (b) (i) "Animal" means, except as provided in Subsection (1)(b)(ii), a live, nonhuman
37 vertebrate creature.

38 (ii) "Animal" does not include:

39 (A) a live, nonhuman vertebrate creature, if:

40 (I) the conduct toward the creature, and the care provided to the creature, is in
41 accordance with accepted animal husbandry practices; and

42 (II) the creature is:

43 (Aa) owned or kept by a zoological park that is accredited by, or a member of, the
44 American Zoo and Aquarium Association;

45 (Bb) kept, owned, or used for the purpose of training hunting dogs or raptors; or

46 (Cc) temporarily in the state as part of a circus or traveling exhibitor licensed by the
47 United States Department of Agriculture under 7 U.S.C. 2133;

48 (B) a live, nonhuman vertebrate creature that is owned, kept, or used for rodeo
49 purposes, if the conduct toward the creature, and the care provided to the creature, is in
50 accordance with accepted rodeo practices;

51 (C) livestock, if the conduct toward the creature, and the care provided to the creature,
52 is in accordance with accepted animal husbandry practices or customary farming practices; or

53 (D) wildlife, as defined in Section [23-13-2](#), including protected and unprotected
54 wildlife, if the conduct toward the wildlife is in accordance with lawful hunting, fishing, or
55 trapping practices or other lawful practices.

56 (c) "Companion animal" means an animal that is a domestic dog or a domestic cat.

57 (d) "Custody" means ownership, possession, or control over an animal.

58 (e) "Legal privilege" means an act that:

59 (i) is authorized by state law, including Division of Wildlife Resources rules; and
60 (ii) is not in violation of a local ordinance.

61 (f) "Livestock" means:

62 (i) domesticated:

63 (A) cattle;

64 (B) sheep;

65 (C) goats;

66 (D) turkeys;

67 (E) swine;

68 (F) equines;

69 (G) camelidae;

70 (H) ratites; or

71 (I) bison;

72 (ii) domesticated elk, as defined in Section [4-39-102](#); or

73 (iii) any domesticated nonhuman vertebrate creature, domestic furbearer, or domestic
74 poultry, raised, kept, or used for agricultural purposes.

75 (g) "Necessary food, water, care, or shelter" means the following, taking into account
76 the species, age, and physical condition of the animal:

77 (i) appropriate and essential food and water;

78 (ii) adequate protection, including appropriate shelter, against extreme weather
79 conditions; and

80 (iii) other essential care.

81 (h) (i) "Shelter," as the term relates to an animal other than a dog or cat, means natural
82 or artificial protection against inclement weather and direct sunlight.

83 (ii) "Shelter," as it relates to a dog or cat, means a barn, dog house, or other enclosed
84 structure that:

85 (A) is sufficiently sound to protect against inclement weather and extreme
86 temperatures;

87 (B) prevents penetration by moisture;

88 (C) includes, in an appropriate size for the dog or cat, a floor with a solid surface, a
89 roof, coverage on all sides, a door or entry portal, and sufficient space to allow for freedom of

90 movement;

91 (D) contains hay, straw, bedding, or a safe, artificial heat source, that allows the dog or
92 cat to maintain a normal body temperature; and

93 (E) is adequately ventilated and clean.

94 (iii) "Shelter" does not include:

95 (A) a crawl space under a building or a part of a building;

96 (B) steps, a deck, or a stoop;

97 (C) a vehicle or the space under a vehicle;

98 (D) an animal carrier or crate designed for temporary transport or temporary housing;

99 (E) a structure made of cardboard or another material that is easily degradable; or

100 (F) a structure with a wire floor or a chain link floor.

101 ~~(h)~~ (i) "Torture" means intentionally or knowingly causing or inflicting extreme
102 physical pain to an animal in an especially heinous, atrocious, cruel, or exceptionally deprived
103 manner.

104 (2) Except as provided in Subsection (4) or (6), a person is guilty of cruelty to an
105 animal if the person, without legal privilege to do so, intentionally, knowingly, recklessly, or
106 with criminal negligence:

107 (a) fails to provide necessary food, water, care, or shelter for an animal in the person's
108 custody;

109 (b) abandons an animal in the person's custody;

110 (c) injures an animal;

111 (d) leaves an animal in the person's custody tethered and unattended in a manner that
112 prevents the animal from reaching shelter:

113 (i) when the temperature is below 32 degrees Fahrenheit or above 85 degrees
114 Fahrenheit; or

115 (ii) when the animal is exposed to wind above 40 miles per hour, or to rain, hail, or
116 snow;

117 ~~(d)~~ (e) causes any animal, not including a dog or game fowl, to fight with another
118 animal of like kind for amusement or gain; or

119 ~~(e)~~ (f) causes any animal, including a dog or game fowl, to fight with a different kind
120 of animal or creature for amusement or gain.

- 121 (3) Except as provided in Section 76-9-301.7, a violation of Subsection (2) is:
- 122 (a) a class B misdemeanor if committed intentionally or knowingly; and
- 123 (b) a class C misdemeanor if committed recklessly or with criminal negligence.
- 124 (4) A person is guilty of aggravated cruelty to an animal if the person:
- 125 (a) tortures an animal;
- 126 (b) administers, or causes to be administered, poison or a poisonous substance to an
- 127 animal; or
- 128 (c) kills an animal or causes an animal to be killed without having a legal privilege to
- 129 do so.
- 130 (5) Except as provided in Subsection (6) or Section 76-9-301.7, a violation of
- 131 Subsection (4) is:
- 132 (a) a class A misdemeanor if committed intentionally or knowingly;
- 133 (b) a class B misdemeanor if committed recklessly; and
- 134 (c) a class C misdemeanor if committed with criminal negligence.
- 135 (6) A person is guilty of a third degree felony if the person intentionally or knowingly
- 136 tortures a companion animal.
- 137 (7) It is a defense to prosecution under this section that the conduct of the actor towards
- 138 the animal was:
- 139 (a) by a licensed veterinarian using accepted veterinary practice;
- 140 (b) directly related to bona fide experimentation for scientific research, provided that if
- 141 the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless
- 142 directly necessary to the veterinary purpose or scientific research involved;
- 143 (c) permitted under Section 18-1-3;
- 144 (d) by a person who humanely destroys any animal found suffering past recovery for
- 145 any useful purpose; or
- 146 (e) by a person who humanely destroys any apparently abandoned animal found on the
- 147 person's property.
- 148 (8) For purposes of Subsection (7)(d), before destroying the suffering animal, the
- 149 person who is not the owner of the animal shall obtain:
- 150 (a) the judgment of a veterinarian of the animal's nonrecoverable condition;
- 151 (b) the judgment of two other persons called by the person to view the unrecoverable

152 condition of the animal in the person's presence;

153 (c) the consent from the owner of the animal to the destruction of the animal; or

154 (d) a reasonable conclusion that the animal's suffering is beyond recovery, through the
155 person's own observation, if the person is in a location or circumstance where the person is
156 unable to contact another person.

157 (9) This section does not affect or prohibit:

158 (a) the training, instruction, and grooming of animals, if the methods used are in
159 accordance with accepted animal husbandry practices or customary farming practices;

160 (b) the use of an electronic locating or training collar by the owner of an animal for the
161 purpose of lawful animal training, lawful hunting practices, or protecting against loss of that
162 animal; or

163 (c) the lawful hunting of, fishing for, or trapping of, wildlife.

164 (10) County and municipal governments may not prohibit the use of an electronic
165 locating or training collar.

166 (11) Upon conviction under this section, the court may in its discretion, in addition to
167 other penalties:

168 (a) order the defendant to be evaluated to determine the need for psychiatric or
169 psychological counseling, to receive counseling as the court determines to be appropriate, and
170 to pay the costs of the evaluation and counseling;

171 (b) require the defendant to forfeit any rights the defendant has to the animal subjected
172 to a violation of this section and to repay the reasonable costs incurred by any person or agency
173 in caring for each animal subjected to violation of this section;

174 (c) order the defendant to no longer possess or retain custody of any animal, as
175 specified by the court, during the period of the defendant's probation or parole or other period
176 as designated by the court; and

177 (d) order the animal to be placed for the purpose of adoption or care in the custody of a
178 county or municipal animal control agency or an animal welfare agency registered with the
179 state to be sold at public auction or humanely destroyed.

180 (12) This section does not prohibit the use of animals in lawful training.

181 (13) A veterinarian who, acting in good faith, reports a violation of this section to law
182 enforcement may not be held civilly liable for making the report.

183 Section 2. Section **76-9-301.5** is amended to read:

184 **76-9-301.5. Spectator at organized animal fighting exhibitions.**

185 It is unlawful for a person to knowingly be present as a spectator at any place, building,
186 or tenement where preparations are being made for an exhibition of the fighting of animals, as
187 prohibited by Subsections **76-9-301(2)**~~(d) and~~ (e) and (f), or to be present at such exhibition,
188 regardless of whether any entrance fee has been charged. A person who violates this section is
189 guilty of a class B misdemeanor.

190 Section 3. Section **76-9-301.6** is amended to read:

191 **76-9-301.6. Dog fighting exhibition -- Authority to arrest and take possession of**
192 **dogs and property.**

193 (1) A peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications,
194 may enter any place, building, or tenement where an exhibition of dog fighting is occurring, or
195 where preparations are being made for such an exhibition and, without a warrant, arrest all
196 persons present.

197 (2) (a) Notwithstanding the provisions of Section **76-9-305**, any authorized officer who
198 makes an arrest under Subsection (1) may lawfully take possession of all dogs, paraphernalia,
199 implements, or other property or things used or employed, or to be employed, in an exhibition
200 of dog fighting prohibited by Subsection **76-9-301(2)**~~(e)~~ (f) or Section **76-9-301.1**.

201 (b) The officer, at the time of the taking of property pursuant to Subsection (2)(a), shall
202 state his name and provide other identifying information to the person in charge of the dogs or
203 property taken.

204 (3) (a) After taking possession of dogs, paraphernalia, implements, or other property or
205 things under Subsection (2), the officer shall file an affidavit with the judge or magistrate
206 before whom a complaint has been made against any person arrested under this section.

207 (b) The affidavit shall include:

208 (i) the name of the person charged in the complaint;

209 (ii) a description of all property taken;

210 (iii) the time and place of the taking of the property;

211 (iv) the name of the person from whom the property was taken;

212 (v) the name of the person who claims to own the property, if known; and

213 (vi) a statement that the officer has reason to believe and believes that the property

214 taken was used or employed, or was to be used or employed, in violation of Section 76-9-301
215 or 76-9-301.1, and the grounds for the belief.

216 (4) (a) The officer shall deliver the confiscated property to the judge or magistrate who
217 shall, by order, place the property in the custody of the officer or any other person designated in
218 the order, and that person shall keep the property until conviction or final discharge of the
219 person against whom the complaint was made.

220 (b) The person designated in Subsection (4)(a) shall assume immediate custody of the
221 property, and retain the property until further order of the court.

222 (c) Upon conviction of the person charged, all confiscated property shall be forfeited
223 and destroyed or otherwise disposed of, as the court may order.

224 (d) If the person charged is acquitted or discharged without conviction, the court shall,
225 on demand, order the property to be returned to its owner.

226 Section 4. Section 76-10-1602 is amended to read:

227 **76-10-1602. Definitions.**

228 As used in this part:

229 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
230 business trust, association, or other legal entity, and any union or group of individuals
231 associated in fact although not a legal entity, and includes illicit as well as licit entities.

232 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
233 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
234 have the same or similar purposes, results, participants, victims, or methods of commission, or
235 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
236 demonstrate continuing unlawful conduct and be related either to each other or to the
237 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
238 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
239 activity as defined by this part shall have occurred within five years of the commission of the
240 next preceding act alleged as part of the pattern.

241 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
242 interest in property, including state, county, and local governmental entities.

243 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
244 command, encourage, or intentionally aid another person to engage in conduct which would

245 constitute any offense described by the following crimes or categories of crimes, or to attempt
246 or conspire to engage in an act which would constitute any of those offenses, regardless of
247 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
248 or a felony:

249 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
250 Recording Practices Act;

251 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
252 Code, Sections 19-1-101 through 19-7-109;

253 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
254 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
255 Code of Utah, or Section 23-20-4;

256 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
257 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

258 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
259 Offenses and Procedure Act;

260 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
261 Land Sales Practices Act;

262 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
263 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
264 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
265 Clandestine Drug Lab Act;

266 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
267 Securities Act;

268 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
269 Procurement Code;

270 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

271 (k) a threat of terrorism, Section 76-5-107.3;

272 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

273 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

274 (n) human trafficking, human smuggling, or aggravated human trafficking, Sections
275 76-5-308, 76-5-309, and 76-5-310;

- 276 (o) sexual exploitation of a minor, Section 76-5b-201;
- 277 (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 278 (q) causing a catastrophe, Section 76-6-105;
- 279 (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 280 (s) burglary of a vehicle, Section 76-6-204;
- 281 (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 282 (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 283 (v) theft, Section 76-6-404;
- 284 (w) theft by deception, Section 76-6-405;
- 285 (x) theft by extortion, Section 76-6-406;
- 286 (y) receiving stolen property, Section 76-6-408;
- 287 (z) theft of services, Section 76-6-409;
- 288 (aa) forgery, Section 76-6-501;
- 289 (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
- 290 76-6-506.6;
- 291 (cc) deceptive business practices, Section 76-6-507;
- 292 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
- 293 criticism of goods, Section 76-6-508;
- 294 (ee) bribery of a labor official, Section 76-6-509;
- 295 (ff) defrauding creditors, Section 76-6-511;
- 296 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 297 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 298 (ii) bribery or threat to influence contest, Section 76-6-514;
- 299 (jj) making a false credit report, Section 76-6-517;
- 300 (kk) criminal simulation, Section 76-6-518;
- 301 (ll) criminal usury, Section 76-6-520;
- 302 (mm) fraudulent insurance act, Section 76-6-521;
- 303 (nn) retail theft, Section 76-6-602;
- 304 (oo) computer crimes, Section 76-6-703;
- 305 (pp) identity fraud, Section 76-6-1102;
- 306 (qq) mortgage fraud, Section 76-6-1203;

- 307 (rr) sale of a child, Section [76-7-203](#);
- 308 (ss) bribery to influence official or political actions, Section [76-8-103](#);
- 309 (tt) threats to influence official or political action, Section [76-8-104](#);
- 310 (uu) receiving bribe or bribery by public servant, Section [76-8-105](#);
- 311 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
- 312 [76-8-106](#);
- 313 (ww) official misconduct, Sections [76-8-201](#) and [76-8-202](#);
- 314 (xx) obstruction of justice, Section [76-8-306](#);
- 315 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section [76-8-308](#);
- 316 (zz) false or inconsistent material statements, Section [76-8-502](#);
- 317 (aaa) false or inconsistent statements, Section [76-8-503](#);
- 318 (bbb) written false statements, Section [76-8-504](#);
- 319 (ccc) tampering with a witness or soliciting or receiving a bribe, Section [76-8-508](#);
- 320 (ddd) retaliation against a witness, victim, or informant, Section [76-8-508.3](#);
- 321 (eee) extortion or bribery to dismiss criminal proceeding, Section [76-8-509](#);
- 322 (fff) tampering with evidence, Section [76-8-510.5](#);
- 323 (ggg) falsification or alteration of government record, Section [76-8-511](#), if the record is
- 324 a record described in Title 20A, Election Code, or Title 36, Chapter 11, Lobbyist Disclosure
- 325 and Regulation Act;
- 326 (hhh) public assistance fraud in violation of Section [76-8-1203](#), [76-8-1204](#), or
- 327 [76-8-1205](#);
- 328 (iii) unemployment insurance fraud, Section [76-8-1301](#);
- 329 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
- 330 [76-9-301\(2\)](#)~~(d)~~ or (e) or (f), or Section [76-9-301.1](#);
- 331 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
- 332 parts, Section [76-10-306](#);
- 333 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
- 334 device, Section [76-10-307](#);
- 335 (mmm) possession of a deadly weapon with intent to assault, Section [76-10-507](#);
- 336 (nnn) unlawful marking of pistol or revolver, Section [76-10-521](#);
- 337 (ooo) alteration of number or mark on pistol or revolver, Section [76-10-522](#);

338 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
339 76-10-1002;

340 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
341 Section 76-10-1003;

342 (rrr) sales in containers bearing registered trademark of substituted articles, Section
343 76-10-1004;

344 (sss) selling or dealing with article bearing registered trademark or service mark with
345 intent to defraud, Section 76-10-1006;

346 (ttt) gambling, Section 76-10-1102;

347 (uuu) gambling fraud, Section 76-10-1103;

348 (vvv) gambling promotion, Section 76-10-1104;

349 (www) possessing a gambling device or record, Section 76-10-1105;

350 (xxx) confidence game, Section 76-10-1109;

351 (yyy) distributing pornographic material, Section 76-10-1204;

352 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;

353 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;

354 (bbbb) distribution of pornographic films, Section 76-10-1222;

355 (cccc) indecent public displays, Section 76-10-1228;

356 (dddd) prostitution, Section 76-10-1302;

357 (eeee) aiding prostitution, Section 76-10-1304;

358 (ffff) exploiting prostitution, Section 76-10-1305;

359 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;

360 (hhhh) communications fraud, Section 76-10-1801;

361 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
362 Currency Transaction Reporting Act;

363 (jjjj) vehicle compartment for contraband, Section 76-10-2801;

364 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
365 this state; and

366 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
367 Sec. 1961(1)(B), (C), and (D).

Legislative Review Note
Office of Legislative Research and General Counsel